



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Ordinance No. 1770 Entitled, "An Ordinance of the City Council of the City of Lodi Amending Lodi Municipal Code Title 12 – Streets, Sidewalks, and Public Places – by Adding Chapter 12.03, 'Sidewalks'"

MEETING DATE: March 1, 2006 (Carried over from meeting of 2/15/06)

PREPARED BY: City Clerk

RECOMMENDED ACTION: Motion waiving reading in full and (following reading by title) adopting the attached Ordinance No. 1770.

BACKGROUND INFORMATION: Ordinance No. 1770 entitled, "An Ordinance of the City Council of the City of Lodi Amending Lodi Municipal Code Title 12 – Streets, Sidewalks, and Public Places – by Adding Chapter 12.03, 'Sidewalks'" was introduced at the regular City Council meeting of February 1, 2006.

ADOPTION: With the exception of urgency ordinances, no ordinance may be passed within five days of its introduction. Two readings are therefore required – one to introduce and a second to adopt the ordinance. Ordinances may only be passed at a regular meeting or at an adjourned regular meeting; except for urgency ordinances, ordinances may not be passed at a special meeting. Id. All ordinances must be read in full either at the time of introduction or at the time of passage, unless a regular motion waiving further reading is adopted by a majority of all council persons present. **Cal. Gov't Code § 36934.**

Ordinances take effect 30 days after their final passage. **Cal. Gov't Code § 36937.**

This ordinance has been approved as to form by the City Attorney.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None required.

A handwritten signature in dark ink, appearing to read "Susan J. Blackston".

Susan J. Blackston
City Clerk

SJB

Attachment

APPROVED:

A handwritten signature in dark ink, appearing to read "Blair King".
Blair King, City Manager

DRAFT

ORDINANCE NO. 1770

Motion **FAILED** by following vote:

Ayes: Johnson & Mayor Hitchcock

Noes: Beckman & Mounce

Absent: Hansen

Ordinance NOT adopted

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LODI AMENDING LODI MUNICIPAL CODE TITLE 12 –
STREETS, SIDEWALKS, AND PUBLIC PLACES – BY ADDING
CHAPTER 12.03, “SIDEWALKS”**

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

Section 1. Lodi Municipal Code Title 12, “Streets, Sidewalks, and Public Places,” is hereby amended by adding Chapter 12.03, “Sidewalks,” to read as follows:

Chapter 12.03

SIDEWALKS

Sections:

- 12.03.010 – Definitions
- 12.03.020 – Sidewalk Maintenance and Repair
- 12.03.030 – Liability for Injury to the Public
- 12.03.040 – Civil Liability for Injuries and Indemnification
- 12.03.050 – Enforcement of this Chapter

12.03.010 – Definitions.

As used in this Chapter, the terms listed below shall have the meaning assigned them.

“Sidewalk” means that area fronting private or public property within the public right-of-way and intended for pedestrian travel, whether or not such area is improved or paved, and any parkway, driveway, curb, or gutter that was or should have been constructed in conformance with the City's specifications for such improvements.

“Defective Sidewalk” means a sidewalk where, in the judgment of the Public Works Director or his/her designee, the vertical or horizontal line or grade is altered, damaged, or displaced to an extent that a safety hazard exists or the sidewalk is in such a condition as to endanger persons or property or is in such a condition as to interfere with the public convenience and use of the sidewalk. Defective Sidewalk shall also include any condition of a public pedestrian right-of-way determined by a court of competent jurisdiction to constitute a dangerous condition of public property.

“Property Owner” means any person, partnership, corporation, or other entity, public or private, owning a lot, lots, or portion of a lot within the City of Lodi and fronting on any portion of a public street, alley, or place where sidewalk exists.

“Lot,” “lots,” or “portions of lots” means a parcel of real property located within the City of Lodi, fronting on any portion of a public street, alley, or place where a sidewalk exists.

12.03.020 – Sidewalk Maintenance and Repair.

A. The provisions of Chapter 22 of Part 3, Division 7, Street and Highways Code of the State of California ("The Improvement Act of 1911"), as is now in effect or as may be amended, are expressly referred to and by such reference made a part of this Chapter, including all proceedings applicable to the maintenance and repair of sidewalks, and the confirming and collecting of assessments for the cost and expenses of said maintenance and repair.

B. The procedure set forth in The Improvement Act of 1911 concerning the maintenance and repair of sidewalks, is, to the extent permitted under State law, subject to revision or supplementation by policies as may from time to time be adopted by resolution of the City Council. Maintenance and repair of sidewalks shall be to specifications established by the Public Works Director or his/her designee.

12.03.030 – Liability for Injury to the Public.

Property Owner is required under this Chapter to maintain and repair the sidewalk fronting on the Property Owner's lot and shall owe a duty to members of the public to keep and maintain the sidewalk in a safe and non-dangerous condition such that it will not endanger persons or property. If, as the result of any failure of any Property Owner to maintain the sidewalk in a safe and non-dangerous condition as required under this Chapter, any person suffers injury or damage to person or property, the Property Owner shall be liable to such person for the resulting damages or injury.

12.03.040 – Enforcement of this Chapter.

The City Manager, through the Public Works Director, shall enforce this Chapter.

SECTION 2. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 3. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 4. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 5. This ordinance shall be published one time in the "Lodi News-Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi, and shall take effect 30 days from and after its passage and approval.

Approved this ____ day of _____, 2006

SUSAN HITCHCOCK
Mayor

Attest:

SUSAN J. BLACKSTON
City Clerk

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State of California
County of San Joaquin, ss.

I, Susan J. Blackston, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1770 was introduced at a regular meeting of the City Council of the City of Lodi held February 1, 2006, and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held _____, 2006, by the following vote:

AYES: COUNCIL MEMBERS –

NOES; COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. 1770 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

SUSAN J. BLACKSTON
City Clerk

Approved as to Form:

D. STEPHEN SCHWABAUER
City Attorney

By _____
Janice D. Magdich
Deputy City Attorney

NOTE: The following blue sheet items were presented at the meeting of 2/15/06, at which this subject matter was subsequently pulled from the agenda.

L-2

Susan Blackston

From: Susan Blackston
Sent: Wednesday, March 01, 2006 4:19 PM
To: 'scottmclarrinon@comcast.net'
Cc: City Council; Blair King; Steve Schwabauer; Randy Hatch
Subject: RE: URGENT Miller Ranch Project (ITEM L-2)

Jear Scott McClarrinon:

This reply is to confirm that your message was received by the City Clerk's Office and each member of the City Council. In addition, by copy of this e-mail, we have forwarded your message to the following departments for information, referral, or handling: 1) City Manager, 2) City Attorney, and 3) Community Development.

/s/ Susan J. Blackston, City Clerk

-----Original Message-----

From: scottmclarrinon@comcast.net [mailto:scottmclarrinon@comcast.net]
Sent: Wednesday, March 01, 2006 4:12 PM
To: Susan Hitchcock; Susan Hitchcock; Susan Blackston; Susan Hitchcock; Bob Johnson; JoAnne Mounce; John Beckman; Larry Hansen
Subject: URGENT Miller Ranch Project

Dear Mayor,

I wanted to let you know how deeply disappointed I am in your ruling regarding the proposed Miller Ranch subdivision. Point in case:

1. You mentioned affordable housing was a factor in your decision (or at least you mentioned it several times). What is affordable? \$400,000. That was the average home price for the KB Villas (in the proposal Tokay Development mentioned homes will be sold at "Market Prices"). So I guess your opinion of affordable differs from mine.
2. Your meeting was held before any of the property owners had even moved into the KB development (they deserved to be heard, they would be the ones effected). If this is how you represent the citizens of this city, I am truly disappointed.
3. Parking is going to be a nightmare. Who parks in their garage these days? I think you would agree that most families use their garages as storage. There are no major thoroughfares in this community. Can they truly be serviced in case of a fire or 911 emergency? Will support services be able to reach them? There is only 1 road in and 1 road out. Not a good design. I can see the lawsuits now.
4. Did you or your staff even visit this community? R-MD is great, but 65 home sites, with very few access streets, is going to be a problem.
5. When a citizen asked about school overcrowding, the clerk responded that the study would not effect the community (they could easily take on new kids). Are you kidding me. Drive by Brodchart Elm. School and look at the portables, maybe the study was right, adding 3-4 kids per class won't hurt a thing (ya right, you of all people should know that!)
6. Having recently moved to Lodi, I do not subscribe to the LNS. Maybe that my fault, because I would have voiced these concerns at the council meeting, but then again I see it as the council letting a good old boy builder pull the wool over your eyes (and heck the city gets residuals in the meantime!)
7. It is scary how many homes in my community KB Villas are uninhabited. I tell my family and friends I live on investors row. What R-MD really does is give investors an opportunity to buy up homes, and rent them out. That should do wonders for my home value. Maybe next time you make one of these decisions you should

consider putting in a clause that the homes can only be sold to first time buyers. Otherwise I say build apartments, because at the end of the day its all renters!

8. In the Villas community there are 80 units. Approx. 60 could be inhibited, well only 30 are. In fact 2 are for sale, and 6 are for rent. What you are doing is allowing a builder to create **an** investors paradise. Is that what you really want? That definatley will not lead to affordable houseing.

9. This is not what I imagined when moving to Lodi.

I guess I can summarize your decision like this:

If you truly had the citizens in mind, you would have let them voice their opinions, but then again how could they, if they were not even moved in. I am deeply disapointed, and I **am** asking you to table the approval of the ordinance tonight for the Miller Ranch Sub Div.

Scott McClarrinon
455 Tuscolana Way
Lodi CA 95240

L-2

Susan Blackston

From: Susan Blackston
Sent: Wednesday, February 15, 2006 7:40 AM
To: 'E.W. Hallisey'
Cc: City Council; Blair King; Steve Schwabauer
Subject: RE: Sidewalk Ord
Dear Mr. Hallisey:

This reply is to confirm that your message was received by the City Clerks Office and each member of the City Council. In addition, by copy of this e-mail, we have forwarded your message to the following departments for informational purposes: 1) City Manager, 2) City Attorney, and 3) Public Works.

Thank you for expressing your views

s/ Susan J. Blackston, City Clerk

-----Original Message-----

From: E.W. Hallisey [mailto:e.hallisey@sbcglobal.net]
Sent: Tuesday, February 14, 2006 5:27 PM
To: Susan Blackston; Susan Hitchcock; Bob Johnson; JoAnne Mounce; John Beckman; Larry Hansen
Subject: Sidewalk Ord.

Council Members,

I believe it would be prudent for all to reconsider their position of the sidewalk ordinance. If passed, this ordinance shifts the burden (with damage of unknown causes to sidewalks) back onto homeowners. Insurance companies generally pay claims rather than fight claims as they see it saving them money. It is predictable that insurance companies will raise their rates once again in California and once again, the property owner will pay the price with very little control of the outcome.

In theory, the city council and government should be acting in the best interest of citizens of Lodi. I think many times this is the case. There are exceptions, and sometimes I wonder if the council looks to city government for the information and decisions which do not always serve the community but rather government in it's self. I think it is always important to understand the distinction. I would qualify this opinion by glancing back at some of the city council and government's recent decisions and where they have placed this city's finances. Two very important words **accountability** and **trust** still appears lacking in the eyes of the public. Does the council have an accurate finger on the pulse of the public, I think not.

E.W. Hallisey
1747 Windjammer Ct
Lodi, CA. 95242

L-2

Susan Blackston

From: Susan Blackston
Sent: Wednesday, February 15, 2006 7:42 AM
To: 'judy crafton'
Cc: City Council; Blair King; Steve Schwabauer; Richard Prima
Subject: RE: "sidewalk law"
Dear **Ms.** Crafton:

This reply is to confirm that your message was received by the City Clerk's Office and each member of the City Council. In addition, by copy of this e-mail, we have forwarded your message to the following departments for informational purposes: 1) City Manager, 2) City Attorney, and 3) Public Works.

s/ Susan J. Blackston, City Clerk

-----Original Message-----

From: judy crafton [mailto:judyk9@yahoo.com]
Sent: Tuesday, February 14, 2006 6:55 PM
To: Susan Blackston; Susan Hitchcock; Bob Johnson; JoAnne Mounce; John Beckman; Larry Hansen
Subject: "sidewalk law"

Dear Council members:

This sidewalk issue is really the last straw Lodi should no longer have the motto Liveable loveable Lodi, it is no longer liveable thanks to rate increases and sidewalk laws that are forcing people to rethink moving here or staying here. You have out priced Lodi for the middle class and senior citizens that make **up** the core of what used to be a wonderful family town. I personally I'm going to campaign against those of you who have allowed all this to go on in my town.

Judy

Relax. Yahoo! Mail virus scanning helps detect nasty viruses!

L-2

Susan Blackston

From: Susan Blackston
Sent: Wednesday, February 15, 2006 7:45 AM
To: 'Steve W.'
Cc: City Council; Blair King; Steve Schwabauer; Richard Prima
Subject: RE: I will bulldoze my sidewalk

To: Peter Aitelli
Morrison h Foerster

This reply is to confirm that your message was received by the City Clerk's Office and each member of the City Council. In addition, by copy of this e-mail, we have forwarded your message to the following departments for informational purposes: 1) City Manager, 2) City Attorney, and 3) Public Works.

/s/ Susan J. Blackston, City Clerk

-----Original Message-----

From: Steve W. [mailto:regwaste@yahoo.com]
Sent: Wednesday, February 15, 2006 7:12 AM
To: Susan Blackston
Subject: I will bulldoze my sidewalk

The second you make me liable for my sidewalk is the same minute it becomes sod.

If you decide to make me liable for the sidewalk, I will immediately bulldoze it, and I will fight you tooth and nail in court to make sure it stays that way, or make sure that you buy the easement back from me and assume all liabilities.

Peter Aitelli
Morrison h Foerster

Do You Yahoo!?
Tired of spam? Yahoo! Mail has the best spam protection around
<http://mail.yahoo.com>

L-2

Susan Blackston

From: Susan Blackston
Sent: Tuesday, February 14, 2006 7:35 AM
To: 'Mitzal@aol.com'
cc: City Council; Blair King; Steve Schwabauer; Richard Prima
Subject: FW: Sidewalk ordinance

Dear Phil Frieders:

This reply is to confirm that your message was received by the City Clerks Office and each member of the City Council. In addition, by copy of this e-mail, we have forwarded your message to the following departments for informational purposes: 1) City Manager, 2) City Attorney, and 3) Public Works.

Thank you for expressing your views,

/s/ Susan J. Blackston, City Clerk

-----Original Message-----

From: Mitzal@aol.com [mailto:Mitzal@aol.com]
Sent: Monday, February 13, 2006 5:40 PM
To: Susan Blackston; Susan Hitchcock; Bob Johnson; JoAnne Mounce; John Beckman; Larry Hansen
Subject: Sidewalk ordinance

The Lakeshore Village Homeowners Association (205 members) still strongly opposes the sidewalk ordinance you are voting on Wednesday. The Association Board of Directors urges each of you to vote no on adoption of this ordinance for reasons previously stated at the last council meeting..

Respectfully, Phil Frieders
President, Lakeshore Village Homeowners Association

RECEIVED

L-2

FEB 14 2006

City Clerk
City of Lodi

February 14, 2006

Dear Susan Hitchcock:

Very recently the city council decided that the property owner should be responsible for the sidewalk liability. I find this just another slap in the face by this city council. You have many old and disadvantaged people in the city of Lodi. How do you expect them to come up with the thousands of dollars to repair the sidewalk? You also have put the homeowner in a terrific position to lose their home by being sued by some dead beat. Who do you think it would be easier to sue, the city of Lodi or the individual home owner? The City of Lodi has a lawyer to protect it. Do you think that every home owner in this city has a lawyer on hand to protect them? Do you think they have the resources to pay for this protection?

In the old days tar and feathering was a way to get rid of the unwanted, but tar and feathering would be too good for you.

Your total disregard for the well being of our citizens leaves us with no choice but to have you removed from office. Maybe you can find another job as a dog catcher or something. I am sure your mentality for not caring would fit you well for that job.

Sincerely,

CITY CLERK'S NOTE:

This communication was hand delivered to the City Clerk's Office on February 14, 2006 by an anonymous citizen. An identical communication was written individually to each Council Member.

cc: City Manager, City Attorney, Public Works Director

L-2

Susan Blackston

From: Susan Blackston
Sent: Tuesday, February 14, 2006 11:10 AM
To: 'mark dempsey'
CC: City Council; Blair King; Steve Schwabauer; Richard Prima
Subject: RE: City Counsel decisions
 Dear Mark Dempsey:

This reply is to confirm that your message was received by the City Clerk's Office and each member of the City Council. In addition, by copy of this e-mail, we have forwarded your message to the following departments for informational purposes: 1) City Manager. 2) City Attorney, and 3) Public Works.

Thank you for expressing your views

/s/ Susan J. Blackston, City Clerk

-----Original Message-----

From: mark dempsey [mailto:markwdempsey@yahoo.com]
Sent: Tuesday, February 14, 2006 11:01 AM
To: Susan Blackston; Susan Hitchcock; Bob Johnson; JoAnne Mounce; John Beckman; Larry Hansen
Subject: City Counsel decisions

Feb 14, 2006

Dear Sirs and Madams,

I have lived in Lodi for several years now and it was my conscience decision to do so because I felt this community offered me the best of everything that was important to my family. But, almost as soon as I moved here it appears that there have been a continuing list of wrong decisions by the city council or just the city itself (my understanding is all of the major decisions go past the city council). They go back to the council authorizing exclusive rights to the utility director to purchase power without consulting the council (he subsequently defied the CAL-ISO by refusing to brown-out parts of the city)(although abiding by ISO requests is required as a prerequisite to be allowed to connect to the transmission lines in this state). Then high priced contracts were signed and a full on publicity blitz was put on saying it was a temporary cost adjustment for keeping the lights on. I left it alone for a year, and then later called and was told it was a 10 year contract (shame on you, that is not temporary). Then after Alan Vallow was fired it is reported that those contracts were bought out within a year. ????????????????

I have seen the roads in Lodi shut down and opened, built and then torn up months later (lots of money, where is the planning to do it all at once). I have been paying for infrastructure replacement on the cities water system but the money has been going to legal fees to fight cleaning up the dry cleaning business contamination (clean it up, its the right thing to do if it is a problem). Your trying to run big business out of Lodi now with the nest wave of rate increases and no I do not agree to pay more to protect them, I already pay too much. The mismanagement in this department borders on corruption, you can't blame one person, there are checks and balances to prevent this from happening (oh that's right, you gave exclusive control to sign contracts to one person). There are many other issues from the lack of educating at the local schools (I know this isn't your fault) to the well below average cost of new homes electrical hook-ups. My point being is that the city of Lodi is starting to show numerous faults in the way it is being run that I never knew were there before I moved here.

2/14/2006

Now the next blow to the average homeowner is this preposterous shifting of responsibility for the cities sidewalks over to the homeowners. If my personal property causes damage to the city property I am responsible for the repair, that is the way it is in every city in the entire country. But **(LET ME MAKE THIS PERFECTLY CLEAR TO ALL OF YOU)**, what you did by announcing that the blame is going to be shifted to the homeowner when there is not a determining cause for an accident, you have invited this group of people that have never worked an honest day of their life to stroll around and see who has the nicest stuff and then inexplicably stumble and hurt their back or some other body part (back pain has been proven over and over to be a huge fraud claim). Then all they have to do is get a doctor to sign on that they have real pain and the lawsuit begins. Ask yourself as a homeowner, do you have enough insurance to cover these idiotic claims, do you honestly think it is your responsibility or do you believe, like most of us that this is why I pay local taxes, so that we have nice sidewalks so that I can go for a walk on them. When I invite people to my home, I know I have a legal liability to provide a safe atmosphere for them to enjoy themselves and if I can't, I shouldn't invite them here. What you are now trying to do is shift your responsibility (the City) over to someone else (the homeowner). Any frivolous lawsuits should be handled as such, but trying to shift that financial burden over to me is just plain ridiculous. If this goes through, your cost in attorneys fees and settlements will go up because I for one will start legal proceedings against the city if someone now brings up a claim against me for a city installed and maintained sidewalk (that is in perfect condition). I will also check into my legal right to absorb this sidewalk into my personal property and put a fence up to prevent people from using it without my expressed permission.

I understand that the city is hurting for funds, but a lot of the recent decisions appear to be very childish and devious in the way that they are put to the people (pass more cost on to developers, \$5,000 on the several hundred homes built recently is nothing when compared to the \$500,000 plus home cost). These decisions only take plain common sense to see they are wrong. Most of us do not have the time or desire to sit through your meetings and express our displeasure, and it probably would not change the decisions anyway. Political agenda has almost always driven the decisions and again the people are the ones whom have to shoulder the burden of irresponsible politicians.

A VERY Concerned Lodi Citizen,

Mark Dempsey
m-dempsey@comcast.net

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